

REQUEST FOR QUALIFICATIONS  
FOR THE  
**PURCHASE OF NATURAL GAS**

**ERIE COUNTY**

Qualifications to be opened on December 28, 2004 **at 2:00 PM** at:

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS  
45 OAK STREET  
BUFFALO, NY 14203

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

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# **DETAILED SPECIFICATIONS FOR THE REQUEST FOR QUALIFICATIONS FOR THE PURCHASE OF NATURAL GAS**

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**1.0     SCOPE:**

In order to operate its facilities in the most flexible manner possible, Erie County is soliciting this "Request for Qualifications" for potential natural gas suppliers. It is Erie County's desire to pre-qualify as many viable suppliers as possible in order to maximize the competitive bidding process outlined hereafter. All qualified suppliers shall be awarded General Terms and Conditions Agreements (hereinafter referred to as Agreement(s)), which will pre-qualify suppliers to respond to the subsequent requests for bids for the periodic natural gas requirements for various County facilities. Erie County may solicit further suppliers throughout the contract term by running one or more additional "Request for Qualifications" bid processes. Erie County shall conduct monthly bids for quantities of natural gas during the contract term, to which all pre-qualified suppliers may respond. The lowest qualified bidder for each monthly bid will be required to execute an Exhibit 1 (Transaction Confirmation) in confirmation of the parties' supply contract.

These specifications and the anticipated natural gas supply Agreement(s) are governed by the prevailing laws of New York State and are intended to serve the best interests of PURCHASER by assuring a reliable supply of low cost natural gas delivered to the City Gate of PURCHASER's Local Distribution Company.

For the purposes of this Specification the following specific provisions shall apply:

PURCHASER:	<b><u>Erie County</u></b>
LDC:	<b><u>National Fuel Gas Distribution Corporation</u></b>

**2.0     CONTRACT TERM:**

Agreement(s) resulting from this Request for Qualifications shall be in effect for a term of twelve (12) months beginning January 1, 2005.

**3.0     QUANTITY:**

Contract Quantities shall be defined in each particular Exhibit 1 (Transaction Confirmation) being solicited for the period to be defined by Erie County, which for purposes of this Specification and as generally anticipated shall be monthly quantities, however, each Exhibit 1 (Transaction Confirmation) shall clearly define said quantities. The following terms shall apply to all quantities solicited:

- 3.1     Subject to the terms and conditions of the Agreement(s), the successful BIDDER agrees to sell and deliver to the Primary Point of Delivery and Erie County agrees to purchase and accept from the successful BIDDER the monthly contract volumes as described in each EXHIBIT 1 (Transaction Confirmation).
- 3.2     The successful BIDDER will be required to assign a point of contact with whom nominations will be made.

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- 3.3 The monthly contract volumes for the PURCHASER are as set forth in each EXHIBIT 1 (Transaction Confirmation) and any variation from the band width as set by the maximum quantity number, as set forth therein, shall be addressed as per the provisions of Section "4.2."
- 3.4 The parties acknowledge that the total volume outlined in each Exhibit 1 (Transaction Confirmation) represents an estimate of the PURCHASER's monthly usage in conjunction with this spot bid procedure, and may be subject to day-to-day variation throughout said month. BIDDER shall deliver the daily quantities as nominated by PURCHASER or its AGENT, and as required by the LDC, throughout the month in question so long as the cumulative total delivered by BIDDER does not exceed 110% of the Exhibit 1 (Transaction Confirmation) volume. If it is determined that the total volume delivered by the BIDDER will exceed 110% of said Exhibit 1 (Transaction Confirmation) volume, the provisions of Section 4.2 shall apply.

4.0 PRICE:

- 4.1 For each Exhibit 1 (Transaction Confirmation) solicited, the BIDDER is requested to provide firm fixed monthly basis prices as a mark-up of the NYMEX Futures contract prices for the Term set forth in said EXHIBIT 1 (Transaction Confirmation). The BIDDER's Basis price shall include all costs, exclusive of taxes, associated with delivery of the gas to the LDC City Gate, as more particularly set forth in paragraph "4.6".
- 4.2 In the event that the sum of any given month's quantities nominated to the successful BIDDER by PURCHASER or its AGENT will exceed 110% of said month's contract volumes, the PURCHASER or its AGENT shall solicit quotes for firm fixed prices for any SUPPLEMENTAL QUANTITIES in excess of 110% of the month's contract volumes from all BIDDERS that had initially submitted pricing for said month. The award of said SUPPLEMENTAL QUANTITIES shall be in accordance with the provisions of Section "7.0" hereafter. It is expressly understood by the parties that delivery of more than ten (10%) percent above the monthly contract volumes as set forth in EXHIBIT 1 (Transaction Confirmation) is a potential occurrence that will be handled exclusively through the solicitation of firm fixed price quotes for said SUPPLEMENTAL QUANTITIES as set forth hereinabove.
- 4.3 The successful BIDDER may be required to "trigger" individual monthly NYMEX Futures Contract pricing in a timely manner upon direction of the AGENT. Each BIDDER, as part of its response hereto, shall set forth its standard procedure for setting triggers, and shall include a description in EXHIBIT "5" of how it would accommodate the PURCHASER or its AGENT in the process of setting triggers. All triggers shall be communicated by PURCHASER or its AGENT by facsimile or email and shall be acknowledged in the same manner by the BIDDER. At either party's discretion, a periodic review of both outstanding and executed triggers may be requested and a reply shall be provided within twenty-four

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(24) hours of said request. Any and all financial gain or loss associated with the triggering of natural gas Futures Contracts shall be incorporated in the price for natural gas for the month as further described below. Should the month's NYMEX pricing not be triggered prior to settlement of that month's Futures Contract, that price would revert to the "Monthly Settlement Price" as published in the Wall Street Journal.

- 4.4 The Contract Price for natural gas for each month's Exhibit 1 (Transaction Confirmation) shall be the sum of the following components:
  - 4.4.1 The firm fixed Basis differential price for the month.
  - 4.4.2 The Weighted Average Cost of Gas, comprised of triggered NYMEX Futures Contract prices for the month and any remaining volumes that were not previously triggered and that revert to the "Monthly Settlement Price" as described in paragraph "4.3" hereinabove.
  - 4.4.3 The cost of any excess volumes of gas supplied in connection with the provisions of paragraph "4.2" hereinabove.
- 4.5 At the conclusion of the month the AGENT shall provide to the BIDDER for its review a pricing sheet (in the format as set forth in EXHIBIT "2") that summarizes all deliveries, triggers and other general pricing information.
- 4.6 The BIDDER's Basis price, as contemplated herein, shall include all costs, exclusive of taxes, associated with the transportation of the gas, including assigned capacity costs, Fuel Loss/Retention allowance for the Supply Company's pipeline, and any other associated costs up to the Primary Point of Delivery.
- 4.7 Title transfer to the natural gas shall occur inside of New York State at the Primary Point of Delivery, and successful BIDDER shall execute all documents relative thereto and incur all costs, exclusive of taxes, associated therewith.
- 4.8 The BIDDER's Basis and total unit prices for quantities of natural gas shall be based on one million British thermal units (MMBtu) delivered to the Primary Point of Delivery. All quoted prices must be in terms of a fixed dollar/cents amount, out to four (4) decimal places, per MMBtu for the month.
- 4.9 The successful BIDDER shall be responsible for Imbalance Penalties imposed by the LDC as a result of the successful BIDDER's failure to deliver pursuant to the Nominations provided by the AGENT.

**5.0 METHOD OF TENDERING PROPOSALS:**

- 5.1 All BIDDERS must tender their proposals on the forms furnished with these specifications

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and shall execute the form in ink or typewriter. Any deviation or minor variations shall be specifically shown and stated in the space provided and only those deviations or minor variations stipulated or permitted thereby will be considered. Forms to be returned include Exhibit 3, Exhibit 4 and Exhibit 5. In addition, information requested in Sections 6.2, 6.4, 6.5 and 7.1.1 is to be submitted.

- 5.2 No person, co-partnership, or corporation, shall submit more than one proposal, either directly or by agent. Each BIDDER shall sign said proposal with his full name, in his own handwriting, and, if a partnership, each partner must sign; if a corporation, the corporate name shall be signed and acknowledged by a duly authorized official thereof.

**6.0 QUALIFICATIONS FOR BIDDING:**

- 6.1 PURCHASER or its AGENT reserves the right to conduct any investigations necessary to verify information submitted by BIDDER and/or to determine BIDDER's capability to fulfill the terms and conditions of the bidding documents and the anticipated monthly natural gas supply contracts.
- 6.2 BIDDERS that are in bankruptcy or in the hands of a receiver at the time of tendering a proposal or at the time of entering into a monthly contract will not be considered by PURCHASER or its AGENT.
- 6.3 PURCHASER or its AGENT reserves the right to visit a prospective broker/marketer's place of business to determine the existence of the company and the management capabilities required to administer any Agreement(s) and/or Exhibit 1 (Transaction Confirmation) resulting herefrom.
- 6.4 With the bid proposal, there shall be submitted a list of five (5) references which shall include an interstate pipeline company, a utility company, past and present clients. The name, address and telephone number for each reference shall be provided.
- 6.5 With the bid proposal, there shall be a demonstrated capability to reliably provide natural gas. In addition, a current financial statement shall be included.

**7.0 METHOD OF AWARD:**

- 7.1 BIDDERS will be pre-qualified and Agreement(s) will be awarded if the BIDDERS are considered responsible. A BIDDER shall be considered responsible when he/she:
- 7.1.1 Has the demonstrated capability to reliably provide natural gas from one or more of the following: gas from multiple arrangements including the National Fuel Gas

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Distribution System, National Fuel Gas Supply System, Canadian or off-shore sources, and/or Southwest and Southeast interstate supply sources, and

- 7.1.2 Is qualified, in the judgment of PURCHASER, to provide the required amounts of gas by reason of experience, available equipment and previous performance.
- 7.2 PURCHASER reserves the right to award the Agreement(s) within thirty (30) days after the opening date of the Request for Qualifications response. Responses may not be withdrawn during this thirty (30) day period.
- 7.3 Exhibit 1 (Transaction Confirmation) awards shall be made to BIDDERS that have entered into Agreement(s) and are the lowest responsible BIDDER meeting all the requirements and specifications for the given period as determined by the PURCHASER or its AGENT. In determining the lowest final cost, PURCHASER or AGENT will consider the total delivered cost, which will include all charges to receive natural gas at the points of consumption. PURCHASER will award a given Exhibit 1 (Transaction Confirmation) within twenty-four (24) hours of bid openings.

8.0 GENERAL PROVISIONS:

- 8.1 A BIDDER will not be allowed to take advantage of any errors or omissions in its bid. PURCHASER reserves the right to reject any and all responses or bids on any or all items in the proposal, even if its actions result in a failure to award any bid whatsoever, and to waive any informalities.
- 8.2 Any questions regarding these specifications or intent of these specifications should be addressed to David W. Koplas of Fluent Energy as described on the cover page of these specifications, and copied by facsimile to the Commissioner of the Department of Public Works at (716) 858-8303.
- 8.3 The specifications, invitation for bids, and the BIDDER's response, which shall be signed and executed by all parties, shall thereafter be deemed to be the General Terms and Conditions Agreement.

9.0 DEFINITIONS:

- 9.1 AGENT - The entity officially designated by PURCHASER to act on its behalf in connection with the competitive bid process, administration of a monthly natural gas supply contract and day-to-day management of natural gas supplies.

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- 9.2 BASIS - The difference in price between the cost of a natural gas NYMEX futures contract at the Henry Hub and the cash price of the same commodity at the primary delivery point. Basis, as contemplated herein, represents transportation costs, regional supply and demand factors, fuel loss/retention, marketer/broker profit and any other costs, exclusive of taxes, associated with gas deliveries to the primary delivery point.
- 9.3 BIDDER - Means any BIDDER to whom an Agreement may be awarded based on their response to this Request for Qualifications.
- 9.4 BRITISH THERMAL UNIT (Btu) - The quantity of heat required to raise one pound of water one degree Fahrenheit at or near its point of maximum density.
- 9.5 CITY GATE - Physical location where gas is delivered to a local distribution company (LDC).
- 9.6 CONTRACT PRICE – The total price for PURCHASER’s Basis and weighted average NYMEX commodity costs for the Exhibit 1 (Transaction Confirmation) volumes to be calculated in accordance with the provisions of Section 4 hereinabove .
- 9.7 FUEL LOSS/RETENTION - Charges by transporters for natural gas losses due to gas used to maintain transportation pressure.
- 9.8 FUTURES CONTRACT - Standardized contract for the sale of a commodity that is traded for future delivery under the provisions of exchange regulations. The standard contract for natural gas at Henry Hub is 10,000 MMBtu.
- 9.9 IMBALANCE PENALTIES - Charges imposed by the LDC as a result of an excessive difference, as defined by its applicable tariffs, between nominated natural gas supply quantities and actual usages or LDC required deliveries.
- 9.10 LDC - Local Distribution Company (i.e. National Fuel Gas Distribution Corporation).
- 9.11 MMBtu and DEKATHERM (DTH) - Means one million British thermal units.
- 9.12 NOMINATION - Volumes in MMBtu or DTH that are submitted periodically during the monthly contract as required by the LDC.
- 9.13 PRIMARY POINT OF DELIVERY – Means the “City Gate” at which point gas enters the LDC’s pipeline.
- 9.14 PURCHASER – The County of Erie through its Department of Public Works
- 9.15 SUPPLEMENTAL QUANTITIES – Those quantities of natural gas required by the PURCHASER in a given month that are above and beyond the upper band width (i.e. 110%)



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of the contract volumes as set forth in the Exhibit 1 (Transaction Confirmation) for said given month.

- 9.16 TITLE TRANSFER POINT – The physical location at which the ownership of the natural gas is transferred from the Supplier to the Purchaser.
- 9.17 TRANSPORTING PIPELINE – The system of pipelines that transport the gas to the LDC (City Gate).
- 9.18 TRIGGER - A contract provision that allows the Buyer or its AGENT to choose when to execute, or pull the trigger on, a pricing mechanism that is based on the relevant futures price at the time of the trigger.

**10.0 TITLE:**

- 10.1 The Title Transfer Point shall be inside the State of New York at the Primary Point of Delivery as defined hereinabove (i.e. "City Gate").
- 10.2 It is expressly agreed and understood that until the gas is delivered to the primary point of delivery, the successful BIDDER shall be deemed to be in exclusive possession and control thereof and shall indemnify and save PURCHASER harmless for and against any liability or loss whatsoever (including costs and attorney's fees in connection therewith) due to personal injury or death or damage to or destruction of property arising out of an occurrence during the successful BIDDER's possession of any gas to be sold and delivered hereunder.
- 10.3 BIDDER warrants the title to all gas sold and delivered to PURCHASER under the Agreement(s) and any subsequent Exhibit 1 and shall indemnify and save harmless PURCHASER from all suits, actions, accounts, costs, losses and expenses (including attorney's fees) arising from or connected with the adverse claim of any person or persons to the gas received, transported or delivered hereunder.

**11.0 ASSIGNMENT AND SUBCONTRACTING:**

The successful BIDDER shall not assign, transfer or sublet, subcontract, or otherwise dispose of the Agreement(s) or any resulting Exhibit 1 (Transaction Confirmation), or any part thereof, or any right, title, or interest thereunder, without the expressed, prior written consent of PURCHASER.

**12.0 QUALITY:**

- 12.1 The gas delivered hereunder to the City Gate shall meet the quality standards of the

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Transporting Pipelines.

12.2 PURCHASER or its AGENT, at its option, may refuse to accept delivery of any gas not meeting the quality specifications set forth in this article.

13.0 REFUND:

PURCHASER will be entitled to a refund of any substantiated overcharges discovered within one (1) year after the billing date if the claim therefore is made within two (2) months after discovery. Such refunds shall be made or credited within thirty (30) days after receipt of a claim and shall bear interest (from the date of erroneous payment) at the rate established by the State of New York per Chapter 153, Laws of 1984. Successful BIDDER shall likewise be entitled to bill and to be paid for any substantiated undercharges discovered within one (1) year after the original billing date if the corrected billing is made within two (2) months after discovery. There shall be no limitation on the time period during which PURCHASER may obtain a refund of BIDDER's intentional overcharges, or overcharges resulting from BIDDER's gross negligence.

14.0 TRANSPORTATION CHARGES:

The successful BIDDER shall pay all costs associated with the transportation of the gas to the "City Gate." PURCHASER has an existing agreement with the LDC to pay transportation charges for the LDC intrastate transportation.

15.0 DELIVERY PRESSURE:

It is understood that the successful BIDDER is restricted in gas delivery by the quality of gas and composition limitations of the LDC's (Supply's) system including pressure limitations, or if transportation through the LDC (Supply) is unnecessary, then it is understood that the successful BIDDER is restricted in gas delivery by the quality of gas and composition limitations of the LDC's system, including pressure limitations. The successful BIDDER shall use his best efforts to secure from either of the above mentioned corporations the greatest possible pressure differential to said corporation's system pressure at the Primary Point of Delivery to permit passage of sufficient gas to supply PURCHASER's requirements. The successful BIDDER, however, need not guarantee delivery volumes because of factors it cannot control beyond the City Gate.

16.0 MONTHLY INVOICING AND MONTHLY PAYMENTS:

Payment will be made within thirty (30) days upon the successful Bidder's submission of a detailed

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invoice to PURCHASER in accordance with the terms and provisions of Section "4" hereinabove.

**17.0 TAXES:**

The PURCHASER shall be responsible for payment of all taxes, therefore, the BIDDER's basis price shall be exclusive of taxes.

**18.0 FORCE MAJEURE:**

18.1 Neither party hereto shall be liable for any failure to perform the terms of the contract when such failure is due to "force majeure" as hereinafter defined. The term "force majeure" as employed in this specification shall mean acts of God, strikes, civil disturbances, interruption by government or court orders, present and future valid orders of any regulatory body having proper jurisdiction, acts of the public enemy, wars, riots, blockades, insurrections, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or freezing of pipelines, the making of repairs or alterations to lines of pipe or plants, mechanical breakdown of either parties' facilities, the failure of any pipeline or local distribution company to accept gas for delivery for any reason, partial or entire failure of gas supply or any other cause, whether the kind enumerated above or otherwise so long as the causes are not reasonably within the control of the party claiming "force majeure". The "force majeure" shall, so far as possible, be remedied with a reasonable dispatch.

18.2 It is agreed that the party claiming "force majeure" shall give prompt certified written notice to the other party of such "force majeure," including a specific description of the circumstances justifying said claim, within three (3) days of the occurrence.

**19.0 SERVICE INTERRUPTION AND CONTRACT CANCELLATION:**

In the event that the delivery of monthly contract natural gas to PURCHASER is interrupted for any reason, PURCHASER reserves the right to obtain its energy needs, all or a part thereof from the other sources. PURCHASER or its AGENT may elect to supplement the interrupted supply with other energy sources or elect to terminate the monthly contract by giving the successful BIDDER written notice not less than ten (10) days prior to the date of termination specified within the notice.

**20.0 TERMINATION FOR CAUSE:**

Both PURCHASER and the successful BIDDER shall each have the right to terminate the monthly contract in the event of default by the other party. The right to terminate the contract is conditioned upon prior written notice, of no less than three (3) days to the defaulting party by certified prepaid

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mail (return receipt requested). The defaulting party shall have two (2) days after the receipt of such notice to remedy such default. If the default is remedied within said two (2) days, the contract shall not be terminated.

**21.0 HOLD HARMLESS:**

The successful BIDDER shall be solely liable and responsible for and shall indemnify, protect, save harmless and undertake the defense of PURCHASER from all losses, claims (whether groundless or not), damages, injuries (including death), suits, actions, debts, accounts, liens, liabilities, costs and expenses, including, without limitation, legal fees and costs incurred and/or caused by any act or omission by the BIDDER, or its respective officials, officers, employees, agents or transporters in connection with the successful BIDDER's sale of natural gas to PURCHASER.

**22.0 GOVERNMENT AUTHORIZATION:**

The Agreement(s) and any subsequent Exhibit 1 (Transaction Confirmation) shall be subject to all valid applicable local, state, and federal laws and the orders, directives, rules and regulations of any governmental body or official having jurisdiction. The Agreement(s) and any subsequent Exhibit 1 (Transaction Confirmation) shall only be amended by a written instrument executed by the parties hereto. The Agreement(s) and any subsequent Exhibit 1 (Transaction Confirmation) contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants, or undertakings other than those expressly set forth herein.

**23.0 HEADINGS:**

The headings used throughout the Specifications and resulting Agreement(s) are set forth for reference purposes only, and are not to be taken into account in construing the terms and provisions of any Article, or to be deemed in any way to qualify, modify, or explain the effects of any such term or provision.

**24.0 INTERPRETATION OF SPECIFICATIONS/RESULTING CONTRACT:**

As to all matters of construction, interpretation and/or performance, these Specifications and resulting Agreement(s) and any subsequent Exhibit 1 shall be interpreted, construed and governed by the laws of the State of New York, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. The Agreement(s) and any subsequent Exhibit 1 (Transaction Confirmation) with these Specifications attached thereto will be binding on the parties hereto and their respective successors and assigns, but may not be assigned without the written consent of each party, such consent not to be unreasonably withheld.

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**25.0 NOTICES:**

Any notice, request, demand, or statement provided for in the contract shall be in writing and deemed given when deposited in the United States postage, prepaid and directed to the post office address of the parties.

**26.0 PLACE OF SUIT:**

The parties to any Agreement(s) or subsequent Exhibit 1 that results from an award under this bid process hereby submit and consent to the jurisdiction of the courts of the State of New York (including, without limitation, the federal courts located within the State of New York) in any action brought to enforce (or otherwise relating to) said Agreement(s) or subsequent Exhibit 1 (Transaction Confirmation).

**27.0 NON-COLLUSIVE BIDDING CERTIFICATION, SUBMISSION OF BIDS AND EXECUTION OF CONTRACT:**

27.1 If the BIDDER is a corporation, the execution of the non-collusive bidding certification in the form of proposal shall be deemed to have been authorized by the Board of Directors of the BIDDER and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion and the execution of the Agreement(s) described herein as the act and deed of the corporation.

27.2 No bid shall be considered for an award nor will any award be made to a BIDDER where the proposal does not include the statements as to non-collusion as set forth in the form of proposal herein; provided however, that if in any case the BIDDER cannot make the foregoing certification, the BIDDER shall so state and furnish with the bid a signed statement which sets forth in detail the reasons therefor. In such event the bid shall not be considered for award nor shall any award be made unless PURCHASER determines that such disclosure was not made for the purpose of restricting competition. In this connection, it should be noted that the fact that a BIDDER has published list prices, rates or tariffs covering items being procured or has informed prospective customers of the proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price as being bid does not constitute, without more, a disclosure to any other BIDDER or to any competitor within the meaning of the non-collusive certification included in the form of proposal.

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**28.0    SECTION 103-a MUNICIPAL LAW**

As required by Section 103-a of the General Municipal Law of the State of New York, the following clause is hereby inserted and shall be considered as part of the specifications and contract: Upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract;

a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any municipal corporation or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal; and

b) any and all contracts made with any municipal corporation or any public department, agency or official thereof, since July 1, 1959, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by the municipal corporation without incurring any penalty or damage on account of such cancellation or termination, but any monies owing by the municipal corporation for goods delivered or work done prior to the cancellation or termination shall be paid.

**29.0    SECTION 220-e LABOR LAW**

29.1    BIDDER agrees herein and in any resulting Agreement(s) or subsequent Exhibit 1 (Transaction Confirmation) to abide by all the provisions set forth in Labor Law Section 220-e, which states the following:

“Provisions in contracts prohibiting discrimination on account of race, creed, color or national origin in employment of citizens upon public works.”

29.2    Every contract for or on behalf of the state or a municipality for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies shall contain provisions by which the contractor with the state or municipality agrees:

(a)    That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall be reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform their work to which the employment relates;

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- (b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex or national origin;
- (c) That there may be deducted from the amount payable to the contractor by the state or municipality under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
- (d) That this contract may be canceled or terminated by the state or municipality, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the state or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

### ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION

Notary Public

Notary Public

Notary Public



**DETAILED SPECIFICATIONS  
FOR THE PURCHASE OF NATURAL GAS  
EXHIBIT "4"**

**AFFIDAVIT REGARDING COLLUSION**

If oath is taken outside of New York State, a County Clerk's Certificate as to the authority of the officer administering the oath must be attached.

EVERY BIDDER IS REQUIRED TO EXECUTE THE FOLLOWING AFFIDAVIT

STATE OF \_\_\_\_\_)

COUNTY OF \_\_\_\_\_)      SS:

CITY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, deposes and says that

---

(If Individual, their address)

---

(If Partnership, names and addresses of partners)

---

(If Corporation, names and titles of officers authorized to execute contracts)

By submission of this bid, each BIDDER and each person signing on behalf of any BIDDER certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to their best knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices, with any other BIDDER or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the BIDDER and will not knowingly be disclosed by the BIDDER prior to opening, directly or indirectly, to any other BIDDER or to any competitor; and
3. No attempt has been made or will be made by the BIDDER to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

\_\_\_\_\_  
Signature of BIDDER

Sworn to me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary

**DETAILED SPECIFICATIONS  
FOR THE PURCHASE OF NATURAL GAS  
EXHIBIT "5"**

**BID RESPONSE FORM**

**Reference Section 2.0 "CONTRACT TERM"**

Beginning January 1, 2005 and ending December 31, 2005.

**Reference Section 4.0 "PRICE"**

The firm fixed Basis price for natural gas delivered to the "Primary Point of Delivery" ( i.e. the Customer's Pool @ NFG City Gate) will be as per the applicable Exhibit 1 (Transaction Confirmation).

**Reference Section 6.0 "QUALIFICATIONS FOR BIDDING" References:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**Description of "Trigger" Process:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BIDDER's Name Typed or Printed

BIDDER's Title

Date

\_\_\_\_\_  
BIDDER's Signature

\_\_\_\_\_  
Telephone Number